THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.26932 & 27249 OF 2005

DATED: 21-03-2006

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Between :

V. Kotireddy and others. … Petitioners

And

1. The A.P. State Council of Higher Education,

Saifabad, Hyderabad and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.26932 & 27249 OF 2005

COMMON ORDER:

These two Writ Petitions, which are based on the same set of facts involving common questions for consideration, are heard together and decided by this common order.

Petitioners in W.P.No.26932 of 2005, who are 19 in number, are students of Holy Mary Institute of Technology & Science, Hyderabad prosecuting 1st Year MCA Course. In this Writ Petition, the petitioners are seeking a declaration that the action of respondents 2 and 3 – Osmania University and Controller of Examinations, Osmania University – in not permitting them to appear for the examinations of 1st Semester of first year MCA course is arbitrary and illegal.

W.P.No.27249 of 2005 has been filed by Holy Mary Institute of Technology & Science, Hyderabad seeking a declaration that the action of the 1st respondent – Government of Andhra Pradesh in issuing G.O.Rt.No.820, dated 8.10.2005 refusing to permit admissions in respect of revised intake in MCA Programme from 40 seats to 60 seats, as well as consequential action of the 3rd respondent-Osmania University in refusing to permit the students so admitted to appear for the examinations of 1st semester of first year MCA Course is arbitrary and illegal.

The facts, in brief, may be noted as under :

Petitioner in W.P.No.27249 of 2005 - Holy Mary Institute of Technology & Science, Hyderabad (hereinafter referred to as the petitioner College) which is a recognized minority educational institution and possessing the required permission from the State Government as well as affiliation from the Osmania University, has an approved intake of 40 seats for the academic year 2004-05 for the MCA full time (FT) Course. For the academic year 2005-06, petitioner-College sought approval of the All India Council for Technical Education (AICTE) for enhancement of intake. However, the required approval could not be granted before the commencement of counseling session, which was initiated on 17.07.2005. In the circumstances, 1st & 2nd phases of counseling were conducted on the basis of the approved intake for the

academic year 2005-06 i.e., 40 seats. As per statutory rules, petitioner-College, which is a minority institution, is entitled to make admissions up to 55% against management quota with minority students; another 15% with either minority or non-minority students, and the remaining 30% admissions are required to be made under Convener's quota. After completion of first and second phases of counseling, the Convener, ICET-2005 by letter dated 20.09.2005 informed all the Colleges including petitioner-College to fill up the unfilled seats under Convener quota by themselves in spot admission on or before 30.09.2005. The petitioner-College had one such unfilled seat under Convener quota for which it issued a notification in the local dailies dated 28-9-2005.

In the meanwhile, AICTE vide letter dated 20.9.2005 accorded approval to the petitioner college for increased intake of 20 seats in the MCA Full Time Course i.e., increasing the approved intake from 40 seats to 60 seats for the academic year 2005-06. Immediately, thereafter the petitioner college published a notification in the local dailies dated 21-9-2005 inviting applications from the eligible candidates qualified in ICET-2005 for admission against the increased intake of 20 seats in MCA course under Management Quota. In pursuance thereof, 19 seats were filled up under Management Quota by way of spot admissions in addition to the one left over vacancy under the Convener's Quota and the process of admissions was completed by 15-9-2005. The said fact was informed to the Convener, ICET-2005 by letter dated 8-10-2005 furnishing the list of candidates provisionally admitted by spot admission and requesting to ratify the same. Even prior to that, by letter dated 29-9-2005 the Registrar, Osmania University was informed about the increased annual intake of MCA Course for the academic year 2005-06 from '40' to '60' and requesting to sanction the provisional affiliation for the additional intake for the year 2005-06. The petitioner college addressed a letter dated 26-9-2005 to the Commissioner of Technical Education requesting for inclusion in the ongoing counselling for the additional intake of 20 seats.

However, the State Government, having take note of the revised orders issued by the AICTE in respect of certain colleges thereby enhancing intake in MBA / MCA Courses for the academic year 2005-06 and having considered the fact that the admissions to the said courses were already closed and the classes have also

been commenced, decided not to accept the revised intakes approved by the AICTE for the year 2005-06. Accordingly, vide G.O.Rt.No.820, Higher Education (EC) Department, dated 8-10-2005, the Government of A.P. rejected the revised intake in 14 MBA / MCA Colleges shown in the Annexure to the said order, including the petitioner college.

Whereas the said order in G.O.Rt.No.820, dated 8-10-2005 is challenged by the petitioner college in W.P.No.27249 of 2005, the 19 students who were admitted in the petitioner college against the increased intake of 20 seats under the Management Quota in pursuance of the revised orders issued by the AICTE, filed W.P.No.26932 of 2005, aggrieved by the action of the Osmania University and the Controller of Examinations, Osmania University in not permitting them to appear for the examinations of 1st semester of I-year MCA Course and seeking a Mandamus directing the respondents to permit them to prosecute and complete the MCA Course in the petitioner college.

The Registrar, Osmania University, filed a counter-affidavit stating that basing on the approval of the AICTE permission of the Government of Andhra Pradesh as well as recommendations of the University Inspection Committee, the Osmania University sent the name of the petitioner-College to the Convener, ICET-2005 for admissions into MCA Course through counseling with an intake of 40 seats. Subsequently, Osmania University announced commencement of classes from 22.08.2005 for the academic year 2005-06, as per the academic schedule. Since MCA courses are offered in Semester System comprising 16 weeks in each Semester, students admitted after completion of 14 weeks i.e., as on 19.09.2005 will not be able to make up the minimum required 75% attendance to make himself/herself eligible to appear for the examination. The conditions of attendance under Attendance Regulations can be relaxed only up to 10% by the Vice Chancellor and since 19 students joined the course from 1.10.2005 onwards, they do not have the requisite percentage of attendance, and therefore, they are not eligible to write the examination. That apart, the Government of Andhra Pradesh vide G.O.Rt.No.802 dated 8.10.2005 had already rejected the revised intake in MCA/MBA Courses approved by AICTE for the academic year 2005-06 in the petitioner-College. It is stated that the management of the petitioner-College remitted

the fees and etc only for 40 students along with the approved list from the Government and there was no mention of the additional intake of 19 students admitted by the College. It is further stated that the petitioner-College was permitted to make admissions on its own only to the extent of vacancies which had arisen after completion of counseling by the Convener, ICET-2005 and not for the additional intake sanctioned by the AICTE. Petitioner-College admitted all the 19 students on its own volition without permission from Government of Andhra Pradesh and the Osmania University. Though the petitioner-College intimated the University about the sanction of additional intake of 20 seats by AICTE through letter dated 29.09.2005, there was no intimation regarding admissions made by it on its own. The University had received a list of only 40 candidates, which were processed and Hall Tickets were issued. No permission by the Government or affiliation by the University was granted in respect of 19 students admitted against the revised intake. It is further stated that the petitioner-College is not entitled to fill up all the 20 additional seats sanctioned by AICTE on its own without seeking permission from the Government and affiliation by the University. That apart, as against 20 revised seats, 30% of seats have to be filled by the Convener, ICET-2005; 15% under management quota and 55% under minority quota with prior permission of the competent authority i.e., A.P. State Council of Higher Education. The students against increased intake ought to have been admitted only after grant of affiliation by the University. The petitioner-College never sought for affiliation for the 20 additional intake. Even the list said to have been forwarded by the Department of Minorities Welfare vide letter dated 5.12.2005 is not sufficient to grant affiliation for additional intake since it is the petitioner-College who has to submit application forms of all the 20 students along with original certificates to manifest minimum qualification etc., The petitioner-College at no point of time forwarded application forms of the additional 19 students and kept the University in dark about the said admission of 19 students. Hence, the petitioners are not entitled for any relief.

I have heard Sri S.R. Ashok, the learned Senior Counsel appearing in W.P.No.27249 of 2005 and Sri A. Sanjeev Kumar, Advocate appearing for the petitioners in W.P.No.26932 of 2005 as well as Sri Deepak Bhattacharjee the learned Counsel appearing for the Osmania University, the learned Government Pleader for Technical Education and Sri Sudheesh Anand appearing for A.P. State

Council of Higher Education.

The learned Senior Counsel Sri S.R. Ashok contended that since admittedly the Director of Technical Education who is the Convener of ICET-2005 directed all the colleges to fill up the unfilled seats under Convener Quota by spot admission on or before 30-9-2005, there is absolutely no justification in not extending the same analogy to the students admitted by the petitioner college against the increased intake of 20 seats under Management Quota. The learned Senior Counsel submits that all the students who were admitted in the petitioner college against the increased intake of 20 students are qualified in ICET-2005 and eligible and particularly since the petitioner college has got sufficient space in the premises where the college is located and also fully equipped with all requirements of space, infrastructure and library facility to cater to the additional intake sanctioned by the AICTE for the academic year 2005-06, the 1st respondent ought not to have passed a general order in G.O.Rt.No.820, dated 8-10-2005 refusing to accept the revised intake. The learned Senior Counsel while pointing out that the only ground on which the revised intake was not accepted was that the academic session for the academic year 2005-06 had already commenced, contended that the said ground on the face of it is untenable since the Convener, ICET-2005 himself fixed the cutoff date to fill up the left over vacancies as 30-9-2005. It is contended that since the admissions against the increased intake of 20 seats were completed before the said cutoff date fixed by the statutory authority, there is absolutely no justification in not allowing the students to appear for the examinations.

On the other hand, the learned Counsel appearing for Osmania University contended that as per the academic schedule as well as the regulations of the University, the 19 students who could not make up the minimum required 75% attendance are not eligible to appear for the examinations. The learned Counsel contends that the approval of increased intake by the AICTE does not automatically entitle the petitioner college to make admissions unless and until the affiliation is granted by the University for the additional intake.

At the outset, it is to be noted that under G.O.Rt.No.820, dated 8-10-2005 the Government rejected the revised intake in 14 MBA / MCA Colleges for the year 2005-06 on the ground that the academic regulations of the universities do not permit admissions into the said courses at that stage. As noted above, the petitioner college is one of the said 14 colleges. Assailing G.O.Rt.No.820, dated 8-10-2005, various other affected institutions filed W.P.No.22541 of 2005 and etc. seeking a declaration that the order of the State Government in G.O.Rt.No.820, dated 8-10-2005 is arbitrary and illegal. This Court, having heard both the parties, by order dated 3-1-2006 dismissed the said batch of writ petitions holding that when once the instructions of first semester of MCA/MBA Courses have been completed, it is impermissible to issue direction to the Convener, ICET/Director of Technical Education to allot candidates or permit the petitioner-institutions to fill up the seats. In the said order, this Court had taken note of the fact that the classes have already been commenced on 22.08.2005 and the last date of instructions of the 1st semester for MCA/MBA was over on 22.11.2005 and that theory examinations of the 1st semester have been commenced on 5.12.2005.

In the circumstances, as rightly contended by the learned Counsel for the respondents, W.P.No.27249 of 2005 in which the petitioner college seeks a declaration that the action of the Government of A.P. in issuing G.O.Rt.No.820, dated 8-10-2005 is arbitrary and illegal does not require any further consideration and is liable to be dismissed as covered by the ratio laid down in W.P.No.22541 of 2005 and batch.

However, the learned Counsel appearing for the petitioners contended that since none of the institutions who filed the earlier batch of writ petitions could admit students against the increased intake sanctioned by the AICTE, whereas the petitioner college had admitted 19 students well within the cutoff date i.e., 30-9-2005, the petitioner college stands on an entirely different footing and therefore the matter requires consideration independently on merits.

Having considered the material available on record, in my considered opinion, even on merits the writ petitions are without any substance and the relief as

prayed for cannot be granted.

It is to be noted that the AICTE while according approval to the increased intake of 20 seats for the academic year 2005-06 vide letter dated 20-9-2005 made it clear that the admissions against the approved intake shall be governed by the admission norms laid down by the concerned Government and the University Authorities. The specific case of the 3rd respondent University is that as per the academic schedule of the University the candidates admitted after completion of four (4) weeks will not be able to make up the minimum required 75% of attendance to make them eligible to appear for the examinations and therefore no admissions can be taken place after 19-9-2005**.** In the circumstances, the mere fact that the AICTE has accorded approval for increased intake does not automatically entitle the petitioner college to proceed with the admissions without obtaining the necessary permission / affiliation from the State Government and the University respectively with regard to the admission of additional intake. Admittedly, the affiliation was granted to the MCA Course in the petitioner college only with an intake of 40 students. Hence, the petitioner college ought not to have admitted the students without obtaining the prior permission of the University. Since it was made clear by the AICTE that the admissions against the revised intake shall be governed by admission norms laid down by the concerned Government and the Universities, the action of the petitioner college in admitting the students against the increased intake on its own cannot be held to be in accordance with law.

It is also relevant to note that admittedly the classes in MCA course commenced from 22-8-2005, whereas the 19 students against the increased intake were admitted only on 30-9-2005. Thus, not only the said students did not put in the required 75% of the attendance, but also they cannot meet the academic standards. The petitioner college having made the admissions on its own without obtaining the permission / affiliation from the State Government and the University cannot invoke the jurisdiction of this Court to compel them to ratify the admissions so made.

Having regard to the facts and circumstances of the case, it cannot be held that the University had acted illegally and unreasonably in not granting affiliation to

the increased intake for the academic year 2005-06. Admittedly the classes in MCA course were commenced from 22-8-2005 and the entire admission process through Centralised Council basing on ICET-2005 was completed by the date of the approval accorded by the AICTE for increased intake. The order of the Government in G.O.Rt.No.820, dated 8-10-2005 itself shows that the academic session in MCA course had already commenced and that even the mid-semester examinations were commenced on 5-10-2005. In the circumstances, the Government as well as the University cannot be found fault with in refusing to accept the increased intake as approved by the AICTE.

It is also relevant to note that whereas the Government of A.P. passed the order on 8-10-2005, these two writ petitions have been filed only on 16-12-2005 and 21-12-2005 respectively after the University refused to admit the students to appear for the examinations.

The learned Counsel for the petitioners while placing reliance upon the decision of the Supreme Court in STATE OF PUNJAB v. SATYAPAL contended that the 19 admissions in question, even assuming were made without valid affiliation, the violation of law, if any, shall be only within the parameters of law. Since the regulations of the University are silent about the consequences of alleged violation, the learned Counsel contends that the same cannot be held to be mandatory. The learned Counsel also points out that there is no specific rule which provides for affiliation of additional intake.

I do not find any substance in the above contentions and the decision cited by the learned Counsel cannot be said to have any application to the facts in the present cases.

In the cases on hand, admittedly the students were admitted into the course much beyond the schedule fixed for admission of the students and after the commencement of the classes. Having regard to the said circumstances, when the University as well as the Government thought it is not advisable to accept the

additional intake, this Court in exercise of jurisdiction under Article 226 of the Constitution of India will not compel them to violate their own rules and regulations which would amount to interference with the academic standards and the academic schedule. May be that, the Convener, ICET for the purpose of the unfilled seats permitted the institutions to make spot admissions upto 30-9-2005, however that cannot be taken as a ground to compel the University to allow the students, admitted by the petitioner college on their own, to appear for the examinations. In view of the orders passed by the Government in G.O.Rt.No.820, dated 8-10-2005 the validity of which was already upheld by this court, undoubtedly the admission of 19 students by the petitioner college was illegal and consequently the students so admitted cannot be permitted to appear for the examinations.

For the aforesaid reasons, both the Writ Petitions are devoid of merit and accordingly the same are dismissed. No costs.

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G. ROHINI, J.

Dt. 21–3-2006.

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